No. 17-5639

IN THE

# Supreme Court of the United States

ADAUCTO CHAVEZ-MEZA,

*Petitioner,*

v.

UNITED STATES OF AMERICA

*Respondent.*

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Tenth Circuit

## BRIEF OF THE CENTER ON THE ADMINISTRATION OF CRIMINAL LAW AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER


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## INTEREST OF THE *AMICUS CURIAE*[1]

The Center on the Administration of Criminal Law (the "Center"), based at New York University School of Law, is dedicated to defining and promoting good government practices in the criminal justice system through academic research, litigation, and public policy advocacy.[2] The Center regularly participates as *amicus curiae* in cases raising substantial legal issues regarding interpretation of the Constitution, statutes, regulations, or policies. The Center supports challenges to practices that raise fundamental questions of defendants' rights or that the Center believes constitute a misuse of government resources in view of law-enforcement priorities. The Center also defends criminal justice practices where discretionary decisions align with applicable law and standard practices and are consistent with law-enforcement priorities.

The Center has a substantial interest in this case because sentencing and sentence-reduction decisions play an important role in the administration of criminal law. Requiring district courts to provide reasoned

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[1] Pursuant to Supreme Court Rule 37.6, *amicus* affirms that no counsel for a party authored the brief in whole or in part, that no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than the *amicus* or their counsel made such a monetary contribution. Counsel for all parties consented to the filing of this brief.

[2] No part of this brief purports to represent the views of New York University School of Law, or New York University, if any.

explanations for disproportional sentence reductions would improve the functioning of the criminal justice system and promote public trust in the sentencing process.

## INTRODUCTION AND SUMMARY OF ARGUMENT

District courts should provide a reasoned explanation for giving a defendant a particular sentence. In the context of original sentencing proceedings, this Court has recognized that providing an explanation for a chosen sentence is "sound judicial practice," *Rita v. United States*, 551 U.S. 338, 356 (2007), because it promotes "the perception of fair sentencing" and enables "meaningful appellate review." *Gall*, 552 U.S. 38, 50 (2007). The Court's reasoning applies equally to the sentence-reduction proceeding in this case.

Petitioner qualified for a sentence reduction based on Amendment 782 to the U.S. Sentencing Guidelines. This amendment (also known as "drugs minus two") reflects the U.S. Sentencing Commission's unanimous view that the Guidelines under which Petitioner was sentenced were too harsh on drug offenders. Petitioner, who was originally sentenced to the low end of the original Guideline range for his offense at 135 months, asked for a proportional sentence reduction to 108 months pursuant to Amendment 782's revised range. Joint Appendix (J.A.) at 43.

The district court, however, reduced Petitioner's sentence only to 114 months, at the middle of the amended Guidelines range, and provided no explanation for increasing the sentence above the original low

end of the Guidelines determination. J.A. at 46. The Tenth Circuit affirmed. J.A. at 50.

That was error. The district court's failure to explain its disproportional sentence reduction was an abuse of discretion. The Tenth Circuit's decision affirming this practice frustrates the Commission's objectives in adopting Amendment 782, and it also undermines the fair and efficient operation of our criminal justice system.

I. When the U.S. Sentencing Commission first issued the Sentencing Guidelines, it intentionally chose baseline offense levels for drug trafficking offenses that would ensure that the applicable Guideline range exceeded the mandatory minimum sentences set by statute. By 2014, the Commission determined that this decision had resulted in excessive prison sentences for drug offenders, which had substantially contributed to prison overcrowding. To address this problem, the Commission unanimously adopted Amendment 782, which reduced the base offense levels for drug trafficking offenses to ensure that the mandatory minimum fell within the Guideline range. This amendment reflected the broad bipartisan agreement that defendants like Petitioner received sentences longer than necessary to serve Congress's objectives in punishing drug offenders. The Commission also unanimously agreed to apply the Amendment retroactively in an effort to reduce the sentences of prisoners currently serving these excessive sentences.

Given the broad support for Amendment 782, district courts should give explanations when their

refusals to grant proportional sentence reductions undercut the Commission's policy objectives.

II. Reasoned sentencing decisions—even in the context of sentence-reduction proceedings—serve important functions in our criminal justice system. They enable meaningful appellate review, provide important feedback to the Sentencing Commission, and promote public trust in the sentencing process.

A. Reasoned explanations are necessary to permit meaningful appellate review of the district court's sentence-reduction decision. In a sentence-reduction proceeding, as in original sentencing, a district court must consider the sentencing factors in § 3553(a). Appellate courts cannot determine whether the district court considered the mandatory factors and exercised its discretion reasonably if there is no record of whether or how the district court considered the factors and exercised its discretion. The absence of reasoned explanations in these proceedings weakens the criminal justice system by precluding meaningful appellate review.

B. Reasoned explanations of sentence-reduction decisions also provide valuable feedback to the Sentencing Commission that can be used in further improvements to the Sentencing Guidelines. Providing information to the Commission is particularly important in the context of sentence-reduction proceedings so that amended Guidelines can continue to be adjusted as appropriate.

C. Reasoned explanations of a sentence-reduction decisions promote the perception of fairness and increase public trust in the criminal justice system. By articulating valid reasons for a disproportional sentence reduction, district courts provide transparency and guard against actual and perceived bias. Even if they disagree with the outcome, criminal defendants are more likely to accept a disproportional sentence reduction if accompanied by a reasoned explanation.

## ARGUMENT

### I. Amendment 782 Reflects the Commission's Unanimous View that the Guidelines Should Provide Shorter Sentences for Drug Offenses.

Petitioner sought to have his sentence reduced based on Amendment 782, which the U.S. Sentencing Commission unanimously passed and made retroactive in 2014. The history of the Sentencing Guidelines' treatment of drug offenses and the passage of Amendment 782 demonstrate the broad bipartisan agreement that defendants like Petitioner received sentences longer than necessary to serve Congress's objectives in punishing drug offenders.

When the U.S. Sentencing Commission issued the first Sentencing Guidelines in 1987, it adopted a Drug Quantity Table that established baseline offense levels based on the quantity and type of drug involved in

the drug trafficking offense.[3] The Commission intentionally chose baseline offense levels that would ensure that the applicable Guideline range exceeded the mandatory minimum sentences set by statute.[4] The Commission set the baseline offense levels in this way "to permit some downward adjustments for defendants who plead guilty or otherwise cooperate with authorities."[5]

By 1994, the Commission's justification for this approach ceased to exist. In that year, Congress created a "safety valve" for mandatory minimum sentences, which permitted sentences below the statutory minimum for non-violent offenders who cooperate with the government. 18 U.S.C. § 3553(f). Given this statutory change, the Commission no longer needed to set base offense levels to ensure that Guideline ranges were above the mandatory minimums because the statutory safety valve could be used to encourage cooperation.

In 2014, the Commission proposed a change to the Sentencing Guidelines to address the discrepancy between the base offense level and the corresponding statutory mandatory minimum for particular drug quantities. This proposal, later known as Amendment 782, would reduce the base offense level for drug offenses by two points, which would ensure that the

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[3] *See, e.g.*, Patti B. Saris, *A Generational Shift for Federal Drug Sentences*, 52 Am. Crim. L. Rev. 1, 6 (2015).

[4] *Id.*

[5] *Id.*

Guidelines range included the statutory mandatory minimum. U.S.S.G. app. C, amend. 782.

As the Commission recognized, Amendment 782 was necessary because, over the prior three decades, the Commission had repeatedly amended the Guidelines in ways that further exacerbated the effect of having base offense levels set above the mandatory minimum levels. Although the original Sentencing Guidelines included only one enhancement, by 2014, the Guidelines contained 14 different enhancements, increasing exponentially the extent to which a base offense level could exceed the amount set by the Drug Quantity Table.[6]

In April 2014, the Commission voted unanimously to adopt Amendment 782. U.S.S.G. app. C, amend. 782. The Commission then considered whether the Amendment should apply retroactively to the thousands of federal prisoners already serving lengthy sentences for drug trafficking offenses. In July 2014, the Commission voted unanimously to apply Amendment 782 retroactively. U.S.S.G. app. C, amend. 788, supp. at 86.

The Commission concluded that these changes were necessary to fulfil its statutory duty to "minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons." 28 U.S.C. § 994(g). By 2014, the federal prison population had

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[6] U.S. Sentencing Comm'n, *Sensible Sentencing Reform: The 2014 Reduction of Drug Sentences*, at 2, https://goo.gl/4jCk2V.

grown to around 200,000 prisoners—more than triple the amount in 1989.[7] As a result, by 2014, federal prisons were 32% over capacity, and high-security federal prisons were 52% over capacity.[8] Drug offenders contributed significantly to this overcrowding because *more than half* of all federal prisoners were serving time for drug offenses.[9]

The Commission concluded that these changes to the Sentencing Guidelines would significantly reduce prison overcrowding. The Commission found that prospective application of Amendment 782 would "reduce the federal prison population by around 6,500 after five years and far more over time."[10] And retroactive application of Amendment 782 would "allow more than 40,000 prisoners to be eligible for reductions in their sentences and could save close to 80,000 prison bed years over time."[11]

The Commission also concluded that reducing sentences for drug offenses would not threaten public safety. In making this determination, the Commission relied on its experience in reducing drug sentences for crack cocaine trafficking.[12] In 2007, the

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[7] Saris, *supra* note 3, at 9.

[8] U.S. Sentencing Comm'n, *Sensible Sentencing Reform: The 2014 Reduction of Drug Sentences*, *supra* note 6, at 1.

[9] Saris, *supra* note 3, at 7.

[10] U.S. Sentencing Comm'n, *Sensible Sentencing Reform: The 2014 Reduction of Drug Sentences*, *supra* note 6, at 1.

[11] *Id.*

[12] Saris, *supra* note 3, at 13-14.

Commission adopted a two-level reduction for defendants convicted of trafficking crack cocaine. The Commission reviewed the data on this reduction and found that "reducing sentences for crack offenders did not make those offenders more likely to commit new crimes or less likely to cooperate with law enforcement."[13]

In voting in favor of the proposed amendment, Commissioner Judge William Pryor, Jr. remarked that the amendment "modestly" reduces the starting range for calculating drug trafficking sentences and "should assist the federal judiciary in fulfilling its role of sentencing drug offenders in a fair and rational manner" and "ensure that drug offenders receive sentences that are sufficient, but not greater than necessary, to comply with the purposes of sentencing."[14] Commissioner Judge Ketanji Brown Jackson similarly commented that lowering the base level is an important step to "recalibrating" the drug Guidelines to enable courts to assign "meaningful penalties that account for the entirety of a defendant's culpability and conduct."[15]

The Commission's proposals received overwhelming public support. The Commission received more than 80,000 comments on Amendment 782, the vast

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[13] *Id.* at 14.

[14] U.S. Sentencing Comm'n, Public Meeting Minutes (April 10, 2014), at 18, *available at* https://goo.gl/ohdtkp.

[15] *Id.* at 16.

majority of which favored the proposed changes.[16] These comments demonstrated that the broad support for Amendment 782 extended across political parties and included prosecutors, public defenders, and judges.[17]

The Department of Justice was a leading supporter of Amendment 782. It submitted comments explaining that the amendment was "consistent with the Department's initiative and goals of controlling the prison population and ensuring just and proportional sentences for all offenders."[18] As the government explained, "[b]y reserving the most severe penalties for serious, violent drug traffickers, we can better promote public safety, deterrence, and rehabilitation while saving billions of dollars and strengthening communities."[19]

Then-Attorney General Eric Holder testified before the Commission in support of Amendment 782. He explained that, by reducing the costs of operating

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[16] U.S. Sentencing Comm'n, *Sensible Sentencing Reform: The 2014 Reduction of Drug Sentences*, *supra* note 6, at 1.

[17] *See, e.g.*, Working Group, Public Comment on Retroactivity of "All Drugs Minus 2" Amendment (June 26, 2014), https://goo.gl/5dyjG2 (submitting letter in support of Amendment 782 and its retroactive application on behalf of diverse working group of judges, police, sheriffs, probation officers, correctional officials, community and business leaders, sentencing reform advocates, and distinguished scholars).

[18] Dep't of Justice, Office of Policy and Legislation, Comment Letter on 2014 Proposed Amendment, at 17 (Mar. 6, 2014), https://goo.gl/15sSf8.

[19] *Id.*

federal prisons, Amendment 782 would allow the Department of Justice to hire more prosecutors and agents, and that it would also make possible greater investment in "good prevention programs, good rehabilitation programs while people are incarcerated, and then good re-entry programs to transition people from prison back into their communities."[20] In short, Amendment 782 would "send a strong message about the fairness of our criminal justice system."[21]

The federal judiciary also supported Amendment 782 and its retroactive application. The Judicial Conference submitted a letter supporting the proposed amendment, calling it a "significant improvement over current law" because it would modify the Drug Quantity Tables to ensure that mandatory minimum sentences would fall within the Guideline range.[22] Many federal judges submitted letters supporting retroactive application of Amendment 782, because "justice demands it and because the date on which a person was sentenced should not dictate the appropriateness of their punishment."[23]

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[20] Att'y Gen. Eric Holder, Transcript of Public Hearing before the U.S. Sentencing Comm'n on Proposed Amendments to the Federal Sentencing Guidelines, at 23-24 (Mar. 13, 2014), https://goo.gl/PEhvrq.

[21] *Id.* at 13.

[22] Committee on Criminal Law of the Judicial Conference of the United States, Comment Letter on 2014 Proposed Amendment, at 4 (Mar. 11, 2014), https://goo.gl/iEBknv.

[23] Judge Robert W. Pratt (on behalf of 20 district judges in the Eighth Circuit), Comment Letter on 2014 Proposed Amendment,

Amendment 782 also had widespread and bipartisan support from Congress. Several senators submitted comments to the Commission supporting the Amendment, stating that it was "overdue," and necessary to "restore appropriate judicial discretion in sentencing, address our unsustainable prison population growth, and create greater opportunity for investing in public safety."[24] Other senators proposed legislation that would similarly provide increased judicial discretion in sentencing, in order to make drug sentences fairer and more cost-efficient.[25]

Finally, Amendment 782 could not go into effect until after Congress had an opportunity to decide whether to veto the change.[26] Indeed, Congress did not even hold a hearing to consider the possibility of

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at 1 (July 7, 2014), https://goo.gl/qBS65d; *see also* Judge Lynn Adelman (on behalf of 11 district judges in the Seventh Circuit), Comment Letter on 2014 Proposed Amendment, at 1 (July 7, 2014), https://goo.gl/d18J8L ("Retroactivity is required as a matter of fundamental fairness.").

[24] Richard J. Durbin, Patrick Leahy & Rand Paul, Comment Letter on 2014 Proposed Amendment, at 2 (Mar. 25, 2014), https://goo.gl/qqtVV5.

[25] S. 1410, 113th Cong. (2013) (enacted).

[26] The Sentencing Commission must submit Amendments to Congress before May 1. Unless otherwise specified, or unless Congress legislates to the contrary, amendments submitted for review shall take effect on the first day of November of the year in which submitted. 28 U.S.C. § 994(p). *See also* U.S. Sentencing Comm'n, Rules of Practice and Procedure (as amended August 2016), https://goo.gl/aH6Bpz.

doing so.[27] With "political buy-in . . . coming from both sides,"[28] it was clear that the Amendment's goal of reducing sentences for drug trafficking offenses had broad Congressional and public support.

Given this bipartisan and public support for sentencing reform, and given the general shift toward less punitive sentences for nonviolent drug offenders, it is particularly important that district courts explain their reasoning when issuing sentence-reduction decisions that conflict with these policy goals.

A disproportionate sentence reduction presents such a conflict because the Commission and supporters of Amendment 782 fully expected courts to reduce defendants' sentences by two levels unless there was a public safety concern or change in the consideration of the § 3553(a) factors. When a court denies the two-level reduction as anticipated by the Amendment, it should explain the reasons for doing so.

## II. Unexplained Sentencing Decisions Undermine The Fair And Efficient Administration Of Federal Criminal Law.

Petitioner was eligible for a sentence reduction under Amendment 782. Because his original sentence

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[27] William H. Pryor, Jr., *Why We Were Right to Reduce Sentencing Guidelines for Federal Drug Offenders*, National Review (Nov. 4, 2015).

[28] Vikrant Reddy, Transcript of Public Hearing before the U.S. Sentencing Comm'n on Proposed Amendments to the Federal Sentencing Guidelines, at 152 (Mar. 13, 2014), https://goo.gl/WvznCV.

was set at the low end of the Sentencing Guidelines range, a proportional reduction under the Amendment would have reduced his sentence from 135 months to 108 months. Although Petitioner's motion for a reduced sentence was granted, the district court reduced the sentence only to 114 months. J.A. at 46. The court gave no reason denying him the additional six-month reduction he requested and reasonably expected to receive under Amendment 782. *Id.*

This sort of unexplained sentencing decision harms our criminal justice system. It frustrates meaningful appellate review, because without an explanation for the chosen sentence, an appellate court has no means of determining whether and to what extent the district court considered the mandatory sentencing factors, or if it abused its discretion in doing so. It also interferes with the Commission's efforts to refine the Guidelines, which Congress has consistently established as a necessary component of the Sentencing Commission's duty. And it undermines the public trust in the system by making the system seem unfair.

Consistent with the majority of circuits to decide the issue, this Court should hold that the district court abused its discretion by not providing any explanation to justify a disproportional sentence reduction. *See* Petr. Br. at 15 (collecting cases). That rule is not only consistent with this Court's prior decisions, *see id.* at 13-14, but it also helps to ensure that federal criminal law is applied fairly and justly.

### A. Reasoned Decisions Enable Meaningful Appellate Review.

A reasoned explanation from the district court in sentence-reduction proceedings is necessary for a court of appeals to conduct meaningful appellate review of the district court's decision. The availability of meaningful appellate review is required by this Court's precedents and promotes fairness and public trust in our judicial system.

District courts have discretion to choose an appropriate sentence for a defendant—both in the original sentencing proceeding and also in any subsequent resentencing or sentence-reduction proceeding. *See, e.g.*, *Gall*, 552 U.S. at 51. That the sentencing decision is discretionary does not suggest a district court may choose a sentence without any constraints. As this Court explained, "[d]iscretion is not whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 139 (2005) (citing Henry J. Friendly, *Indiscretion About Discretion*, 31 Emory L.J. 747, 758 (1982)); *see also id.* ("We have it on good authority that 'a motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles.'" (quoting *United States v. Burr*, 25 F. Cas. 30, 35 (No. 14,692d) (CC Va. 1807) (Marshall, C. J.))).

This Court has consistently held that where a district court is required to consider particular factors in making a decision, its failure to explain its decision by

reference to those factors suggests an abuse of discretion. *See United States v. Taylor*, 487 U.S. 326, 336-37 (1988); *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 558 (2010). As the Court recognized in *Taylor*, and again in *Perdue*, a congressional mandate that a decision should be governed by consideration of particular factors can only be effectuated if appellate courts are able to determine "whether a district court has ignored or slighted a factor that Congress has deemed pertinent." *Taylor*, 487 U.S. at 337; *see also Perdue*, 559 U.S. at 558.

These principles require district courts to explain their reasoning for sentence-reduction decisions. When courts provide no explanation, appellate courts have no way to assess if the district court abused its discretion. *See, e.g., United States v. Marion*, 590 F.3d 475, 477-78 (7th Cir. 2009) ("[I]t is impossible for us to ensure that the district court did not abuse its discretion if the [sentence-reduction] order shows only that the district court exercised its discretion rather than showing *how* it exercised that discretion."). As the Second Circuit explained, "some statement of reasons is fully applicable in the context of a motion for a sentence reduction," because the appellate court "will not be able to determine whether the district court's exercise of discretion was reasonable without an indication of the reason the discretion was exercised as it was." *United States v. Christie*, 736 F.3d 191, 196 (2d Cir. 2013)

A reasoned decision is particularly necessary when, as here, the district court provides a sentence

reduction that is disproportionate to where the original sentence fell within the applicable Guideline range. For both the original sentence and the reduced sentence, the district court must consider the same factors. *See* 18 U.S.C. § 3582(c)(2) (instructing court to consider § 3553(a) factors); *see also* U.S.S.G. § 1B1.10 cmt. 1(B)(i). Here, the district court originally concluded, based on these factors, that Petitioner should be sentenced at the low end of the Guidelines range. The court then concluded, based on the same factors, that the Petitioner deserved a sentence in the middle of the Guidelines range. The district court's failure to explain why it changed its view is contrary to "the basic principle of justice that like cases should be decided alike." *Martin*, 546 U.S. at 139.

A district court that does not grant a proportional sentence reduction also cannot rely on its explanation for how it weighed the § 3553(a) factors in defendant's original sentence. To the contrary, the disproportional sentence presumes that the court has *changed* how it weighed the relevant factors. Such a departure requires a new explanation by the court, where it is not otherwise apparent from the record. Without such an explanation, an appellate court has no means to determine if and how the district court considered the sentencing factors in selecting the modified sentence.

If appellate courts are to play a meaningful role in sentence-reduction proceedings, district courts must explain their reasoning. Otherwise, courts of appeal and this Court must either speculate as to why the district court imposed a particular sentence or simply

rubber stamp any decision the district court makes. Both options undermine the effectiveness of appellate review and thus the legitimacy of the judicial system.

### B. Reasoned Decisions Provide Important Information to the Sentencing Commission.

Explanations for sentence-reduction decisions are also important because they provide valuable feedback to the Sentencing Commission, which in turn will lead to more informed and accurate Sentencing Guidelines.

The Sentencing Guidelines play an important role in the criminal justice system. This Court has preserved a "key role" for the Guidelines by requiring district courts to treat them as the "starting point and the initial benchmark" of their sentencing decisions. *Kimbrough v. United States*, 552 U.S. 85, 108 (2007) (quoting *Gall*, 552 U.S. at 49). In order to ensure that the Sentencing Guidelines are fair and accurate, the Commission has an ongoing duty to review and revise the Guidelines. 28 U.S.C. § 994(o).

District court sentencing determinations are an integral part of this process. Indeed, "the very theory of the Guidelines system is that when courts, drawing upon experience and informed judgment in cases, decide to depart, they will explain their departures," the "courts of appeals, and the Sentencing Commission, will examine, and learn from, those reasons," and "the resulting knowledge will help the Commission to change, to refine, and to improve, the Guidelines themselves." *United States v. Rivera*, 994 F.2d 942,

949-50 (1st Cir. 1993) (Breyer, C.J.); Stephen Breyer, *The Federal Sentencing Guidelines and the Key Compromises upon Which They Rest*, 17 Hofstra L. Rev. 1, 8 (1988) (guidelines system is an "evolutionary" one in which "the Commission issues Guidelines, gathers data from actual practice, analyzes the data, and revises the Guidelines over time").

When judges articulate reasons for sentences and sentence reductions, they provide "relevant information to both the court of appeals and ultimately the Sentencing Commission," which help the Guidelines "constructively evolve over time, as both Congress and the Commission foresaw." *Rita*, 551 U.S. at 358; *see also United States v. Booker*, 543 U.S. 220, 263 (2005) (Sentencing Commission modifies the Guidelines "in light of what it learns, thereby encouraging what it finds to be better sentencing practices" and "promot[ing] uniformity in the sentencing process").[29]

Reasoned explanations for sentencing decisions (including sentence reductions) are "a conduit by which particular insights and experiences of trial

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[29] *See also* Paul E. Shelton, *"Reasons? We Don't Need No Stinkin' Reasons": Why United States District Courts Should Be Required to Explain 17 U.S.C. § 3582(c)(2) Resentencing Decisions*, 87 Tul. L. Rev. 1311, 1325 (2013) ("Whether a district court sentences a defendant within the applicable guideline range or departs from it, the court's explanation for doing so is essential to the Sentencing Commission's determination as to whether an amendment to the Sentencing Guidelines is warranted.").

court judges can pass to sentencing policy makers."[30] The Sentencing Commission has recognized the benefits of this "robust feedback loop" between the judiciary and the Commission for the purpose of improving the Guidelines.[31]

Significant changes to the Sentencing Guidelines have grown "organically from seeds sown by the district courts."[32] District courts have expressed policy disagreements and advocated for sentencing reform for Guidelines related to the 100:1 ratio for crack/powder cocaine, methamphetamine, MDMA (ecstasy), and illegal reentry.[33]

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[30] Michael M. O'Hear, *Appellate Review of Sentence Explanations: Learning from the Wisconsin and Federal Experiences*, 93 Marquette L. Rev 751, 760 (2009).

[31] *Id.* at 761 (citing U.S. Sentencing Guidelines Manual Section 1A1.1 cmt ed. note (2006) ("By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so, the Commission, over time, will be able to create more accurate guidelines . . . .").

[32] Scott Michelman & Jay Rorty, *Doing Kimbrough Justice: Implementing Policy Disagreements with the Federal Sentencing Guidelines*, 45 Suffolk U. L. Rev. 1083, 1109 (2012).

[33] *See e.g.*, *United States v. Gully*, 619 F. Supp. 2d 633, 638-45 (N.D. Iowa 2009) (disagreeing with 100:1 ratio in crack-cocaine Guidelines on policy grounds because lack of empirical support and disparate impact on black offenders); *United States v. Hayes*, 948 F. Supp. 2d 1009, 1014 (N.D. Iowa 2013) (joining other courts to express policy disagreement with methamphetamine Guidelines as not based on empirical evidence and excessive); *United States v. McCarthy*, 2011 WL 1991146 at *3-4 (S.D.N.Y. May 19, 2011) (criticizing guidelines' recommended punishment for MDMA (ecstasy)); *United States v. Amezcua-Vasquez*, 567 F.3d 1050 (9th Cir. 2009) (reversing as substantively unreasonable a

The robust feedback loop between the judiciary and the Commission only works, however, if district courts issue reasoned explanations for their sentencing decisions. The Commission must be able to review the decisions for explicit policy disagreement or explanations of how individual factors resulted in the assigned sentence.

Reasoned decisions in the context of sentence-reduction proceedings are particularly useful for the Sentencing Commission. These proceedings provide an opportunity for the district courts to give direct feedback to the Commission on the efficacy of revised Guidelines. Because the Guidelines are intended to continuously evolve over time, the Commission may revise a Guideline multiple times to improve its accuracy. District courts' reasoned opinions in this context can inform the Commission whether the amended Guidelines were in fact an improvement, or if additional modifications are needed.

By issuing reasoned decisions in applying revised Sentencing Guidelines, district courts provide valuable feedback that the Commission can use to continue to improve the Sentencing Guidelines. Particularly where a district court departs from an amendment's expected reduction, an explanation of why it did so is important for the Commission, as well as for the criminal defendant and the appellate court. This transparent dialogue between the courts and the

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within-guideline sentence in an illegal reentry case where the 16-level enhancement under § 2L1.2(b)(1)(A) overstated the seriousness of the defendant's offense and failed to avoid unwarranted disparity).

Commission gives substance to an evolutionary process that enhances public trust in the criminal justice system.

### C. Reasoned Decisions Promote Transparency, Fairness, and Public Trust in the Criminal Justice System.

This Court has acknowledged that "[c]onfidence in a judge's use of reason underlies the public's trust in the judicial institution" and that a "public statement of those reasons helps provide the public with the assurance that creates that trust." *Rita*, 551 U.S. at 356. Explaining the reasons that a particular sentence was selected remains "sound judicial practice," *id.*, in the context of sentence-reduction proceedings. Requiring reasoned explanations for sentence reductions—especially for disproportional reductions like in this case—benefits the criminal justice system by promoting transparency, fairness, and uniformity in sentencing.

A district court's failure to explain its sentencing decision "affects the fairness, integrity, and public reputation of judicial proceedings." *United States v. Lewis*, 424 F.3d 239, 247 (2d Cir. 2005). Without a reasoned explanation, criminal defendants and the general public may be concerned that such sentencing decisions are unreliable, biased, arbitrary, "or that irrelevant factors, such as race or ethnicity, significantly affect sentences."[34] When a court provides a reasoned explanation—with reference to the

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[34] U.S. Sentencing Comm'n, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice*

objective principles that Congress has explicitly required it to consider—actual and perceived bias can be eliminated.[35] Explanations therefore promote confidence in the criminal justice system because "both the parties and the public can understand why a defendant received a particular sentence."[36]

Social psychology research confirms that "when the people affected by a decisionmaking process perceive the process to be just, they are much more likely to accept the outcomes of the process, even when the outcomes are adverse."[37] According to this research, when a court considers a defendant's arguments and explains its decision, a defendant is more likely to accept the outcome, perceive the process to be legitimate, and have a greater "sense of obligation to obey the law in the future."[38] These findings provide

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*System is Achieving the Goals of Sentencing Reform*, 137 (Nov. 2004), *available at* https://goo.gl/pakchi.

[35] Jelani Jefferson Exum, *Why March to a Uniform Beat - Adding Honesty and Proportionality to the Tune of Federal Sentencing*, 15 Tex. J. on C.L. & C.R. 141, 169 (2010); O'Hear, *Appellate Review of Sentence Explanations*, *supra* note 31, at 755.

[36] Jennifer Niles Coffin, *Where Procedure Meets Substance: Making the Most of the Need for Adequate Explanation* 9 (July 2010, revised and updated through Aug. 15, 2016), https://goo.gl/zNhNnw; *see also United States v. Grier*, 475 F.3d 556, 572 (3d Cir. 2007) (a reasoned explanation "promotes respect for the adjudicative process, by demonstrating the serious reflection and deliberation that underlies each criminal sentence").

[37] Michael M. O'Hear, *Explaining Sentences*, 36 Fla. St. U. L. Rev. 459, 478 (2009).

[38] *Id.*

support for this Court's observation that treating a defendant with "basic fairness" will "enhance the chance of rehabilitation by avoiding reactions to arbitrariness." *Morrissey v. Brewer*, 408 U.S. 471, 484 (1972).

Psychological research also suggests that requiring courts to explain their reasoning results in better decision-making. Requiring a person to justify her decision tends to mitigate biases and lead to better consideration of all the available information.[39] The accountability that comes with providing a public explanation can further reduce biases associated with a lack of critical self-attention.[40] As a result, requiring reasoned decisions can lead to more accurate and fair sentence-reduction decisions for defendants.

A study of resentencing proceedings confirms this point. The study looked at instances in which a sentence was vacated on appeal and remanded for the district court to provide an explanation for the decision.[41] Even though the court was free to impose the same sentence on remand, the need to provide an explanation resulted in significance changes to the length of the sentences. The courts changed the sentence in the majority of cases, and for within-guideline

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[39] O'Hear, *Appellate Review of Sentence Explanations*, *supra* note 30, at 759.

[40] Jennifer S. Lerner & Philip E. Tetlock, *Accounting for the Effects of Accountability*, 125 Psychol. Bull. 255, 265 (1999).

[41] *See* Coffin, *supra* note 36.

sentences, 58% of sentences were less severe on remand.[42]

Finally, providing an explanation is particularly important for sentence-reduction decisions because defendants have fewer rights in these proceedings. Defendants have no right to be present during the proceeding. Fed. R. Crim. P. 43(b)(4). And most courts have held that defendants in sentence-reduction proceedings do not have the right to counsel or to an evidentiary hearing. *See, e.g.*, *United States v. Legree*, 205 F.3d 724, 730 (4th Cir. 2000); *United States v. Gregory*, 350 F. App'x 536, 539 (2d Cir. 2009). In these circumstances, unless the court issues a reasoned decision, a prisoner will not know why he did not receive the reduction he sought or expected.

In sum, public trust in our criminal justice system depends on transparent decision-making. This transparency ensures that each defendant receives fair treatment, and that his sentence is based on application of the correct legal standards, not the product of bias. To achieve these objectives, courts must explain why a defendant is given a particular sentence. The benefits of reasoned explanations apply just as strongly to resentencing and sentence-reduction decisions as to the original sentencing decision. The district court in this case should have explained how it chose the sentence it gave Petitioner and why it departed from giving the expected two-level reduction under Amendment 782.

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[42] *Id.* at 18.

## CONCLUSION

For the foregoing reasons, as well as those reasons set forth in Petitioner's brief, the decision of the court of appeals should be reversed.

Respectfully submitted,

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